**NCN: [2025] UKFTT 00343 (GRC)**

**Case Reference: EA/2024/0010**

**First-tier Tribunal**
**(General Regulatory Chamber)**
**Information Rights**

**Heard by Cloud Video Platform**
**Heard on: 12 and 13 February 2025**
**Panel deliberations on: 24 February 2025**
**Decision given on: 20 March 2025**
**Amended decision sent to the parties on: 27 March 2025**

**Before**

**JUDGE SOPHIE BUCKLEY**
**MEMBER DAVE SIVERS**
**MEMBER SUSAN WOLF**

**Between**

**DR CHRISTOPHER GARRARD**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER**
**(2) CABINET OFFICE**

Respondents

**Representation:**
For the Appellant: Mr. Jackson (Counsel)
For the First Respondent: Did not appear
For the Second Respondent: Mr. Waldegrave

**Amended under rule 40 of the Tribunal Procedure (First-tier Tribunal) General Regulatory Chamber Rules 2009**

**Decision:** The appeal is allowed in part.

**Substituted Decision Notice:**

Organisation: The Cabinet Office

Complainant: Dr Christopher Garrard

The Substitute Decision – IC-206407-M6N3

For the reasons set out below:

1. On the balance of probabilities, the Cabinet Office holds further information within the scope of the request.
2. The information on CB3/84 identified in the closed annex is within the scope of the request (**Information A**).
3. The remainder of the information in CB3 is outside the scope of the request.
4. The Cabinet Office was entitled to rely on section 27 of the Freedom of Information Act 2000 (FOIA) in relation to the information identified in the closed annex (**Information B**).
5. The Cabinet Office was not entitled to rely on section 27 FOIA in relation to the information identified in the closed annex (**Information C**).
6. The Cabinet Office was not entitled to rely on section 36 FOIA to withhold any of **Information C**.
7. The Cabinet Office is required to take the following steps within 35 days of the date of promulgation:
    a. Undertake a further search of the 'email archive' for information within the scope of the request, taking account of the tribunal's reasons below, and issue a fresh response to the appellant confirming whether it holds further information and, if it does, either supply the information sought or serve a refusal notice under section 17 of FOIA including what grounds they rely on.
    b. In relation to **Information A** the Cabinet Office must provide a fresh response to the request confirming that it held the information and must either supply the information sought or serve a refusal notice under section 17 of FOIA including what grounds they rely on.
    c. Disclose **Information C** to the appellant.

## REASONS

**References**

References in the form OB/X are to page numbers in the open hearing bundle.

References in the form SB1/X are to page numbers in the open supplementary bundle containing the exhibits to the appellant's first witness statement.

References in the form SB2/X are to page numbers in the OPEN Further Supplementary Hearing Bundle filed by the Appellant.

References in the form CB1/X are to page numbers in the first CLOSED Hearing Bundle.

References in the form CB2/X are to page numbers in the second CLOSED Hearing Bundle.

References in the form CB3/X are to page numbers in the third CLOSED Hearing Bundle.

**Introduction**

1. This is an appeal against the Commissioner's decision notice IC-206407-M6N3 of 7 December 2023 which held that section 27 of the Freedom of Information Act 2000 (FOIA) was engaged in relation to the requested information and that the public interest favoured maintaining the exemption.

2. During the course of these proceedings the Cabinet Office disclosed most of the withheld information. This decision deals with the remaining withheld information.

3. The Cabinet Office now relies on section 27(c) and (d) and section 36(2)(b)(i) and 36(2)(c).

**Background to the appeals**

4. Gautam Adani is an Indian industrialist and one of the wealthiest individuals in the world. He is the chairman of the Adani Group, which is an Indian multinational conglomerate with interests including ports, airports, power generation and transmission and green energy.

5. The request relates to information held by the Cabinet Office in relation to meetings between the then Prime Minister, Boris Johnson, and Gautam Adani in October 2021 and April 2022 and the announcement of Adani Green Energy's sponsorship of the Science Museum's new 'Energy Revolution' Gallery on 19th October 2021.

6. The information that the Cabinet Office has confirmed it holds within the scope of the request consists of:

    a. A 'GIS briefing pack' for the Prime Minister for the Global Investment Summit, 18-19 October 2021.
    b. A 'BEIS Clutch Card' prepared by BEIS (the Department for Business, Energy & Industrial Strategy). Cabinet Office records suggest that the BEIS Clutch Card was provided to the then Prime Minister for use at his meeting at the October 2021 Global Investment Summit.
    c. A letter dated 28 October 2021 from the Private Secretary for Trade and Europe to the Department for International Trade regarding the then Prime Minister's meetings at the 2021 GIS (the 2021 DIT Letter).
    d. A 'visit briefing pack' from the Prime Minister's visit to India April 2022.

e. A letter from the Private Secretary for Foreign Affairs to the Department for International Trade dated 26 April 2022 (the 2022 DIT letter).

7. On 3 February 2025 the Cabinet Office disclosed most of this information to Dr Garrard. It now relies only on section 27(1)(c) and (d) and, in the alternative, section 36(2)(b)(i) and (c), to withhold 5 passages across the visit briefing pack and the GIS briefing pack:
   a. The first redaction: GIS briefing pack SB2/223
   b. The second redaction: GIS briefing pack SB2/223
   c. The third redaction: visit briefing pack SB2/230
   d. The fourth redaction: visit briefing pack SB2/230
   e. The fifth redaction: visit briefing pack SB2/231

8. On 20 November 2024 a complaint was filed by the US Securities Exchange Commissioner against a number of defendants including Mr Adani, who was the chief executive of Adani Green Energy. The allegation was that between July and December 2021 the defendants collectively engaged in a bribery scheme involving the equivalent of hundreds of millions of dollars to try to obtain contracts that benefitted Adani Green Energy, while at the same time falsely touting the company's compliance with antibribery principles and law in connection with a 750 million dollar bond offering.

9. The alleged scheme involved paying or promising to pay bribes worth hundreds of millions of dollars to Indian state government officials to induce Indian state governments to enter into contracts necessary for Adani Green Energy to develop India's latest solar power plan project, from which Adani Green Energy stood to earn billions of dollars.

10. By a Grand Jury indictment dated 24 October 2024 criminal charges were levied by the US Department of Justice against a number of defendants, including Gautam Adani, on a similar factual basis to the US Securities Exchange Complaint. A Grand Jury Indictment can be filed if there is 'probable cause' that the crime has been committed by these defendants on the basis of the evidence presented by the prosecutor.

**The request**

11. Dr Garrard made the following request on 14 June 2022:

> "Please confirm whether you hold any of the following recorded information relating to the following specified events, and to then disclose copies of the material specified beneath in each case:
>
> 1. Prime Minister Boris Johnson's meeting with Gautam Adani at Adani HQ in Gujarat on April 21st 2022.

2. Prime Minister Boris Johnson's meeting with Gautam Adani at the Global Investment Summit at the Science Museum on 19th October 2021.

3. The announcement of Adani Green Energy's sponsorship of the Science Museum's new 'Energy Revolution' Gallery on 19th October 2021.

In each case, please disclose copies of:

- Any briefing notes or readouts that were created for the events specified

- Internal correspondence within the Cabinet Office which discusses arrangements for the events specified above

- Correspondence with staff from the Adani Group (or its subsidiaries) concerning arrangements for the events above, including both relevant ministerial and management team members that were involved in any such correspondence."

**The response**

12. The Cabinet Office responded to Dr Garrard's request on 13 July 2022 withholding the information under sections 27(1)(c) and (d) (international relations) and 35(1)(a) and (d) (government policy) of FOIA. The Cabinet Office maintained its position on internal review.

13. During the course of the Commissioner's investigation the Cabinet Office relied in the alternative on sections 36(2)(b)(i) and (ii) and 36(2)(c) (prejudice to the effective conduct of public affairs).

14. During the course of these proceedings:

    a. The Cabinet Office identified two further items of information within the scope of the request, namely the BEIS Clutch Card and the 2021 DIT Letter. These were withheld under section 27 and, in relation to the BEIS Clutch Card, section 35 in the alternative,
    b. The Cabinet Office then reviewed its position and disclosed most of the withheld information save for:
        i. Two redactions to the GIS briefing pack (the first and second redactions).
        ii. Three redactions to the visit briefing pack (the third, fourth and fifth redactions).

    The redacted information is withheld under section 27(c) and/or (b) and/or section 36(2)(b)(i) and/or (2)(c).

**The decision notice**

15. In a decision notice dated 7 December 2023 the Commissioner decided that the requested information was exempt under section 27 FOIA.

16. The Commissioner accepted that the prejudice indicated by the Cabinet Office clearly related to the interests which sections 27(1)(c) and 27(1)(d) are designed to protect. With regard to the second criterion, the Commissioner was satisfied that the Cabinet Office had described a causal link between disclosure of the requested information and prejudice occurring to the UK's international relations. Having inspected the requested information, the Commissioner accepted the Cabinet Office's assessment as to the likelihood of such prejudice.

17. The Commissioner acknowledged that there was a legitimate public interest in disclosing information relating to meetings involving the UK Prime Minister. The Commissioner also accepted that, in light of the submissions advanced by the complainant, there was a genuine public interest in the disclosure of information which would provide insight into the UK's relations with Mr Adani. Disclosure of the withheld information would go some way to satisfy this public interest.

18. However, the Commissioner considered that the fact that a prejudice-based exemption was engaged meant that there was automatically some public interest in maintaining it, and this should be taken into account in the public interest test. The Commissioner considered there to be a very significant public interest in protecting the ability of the UK to protect and promote its interests with other States such as India and in ensuring that the UK can enjoy effective international relations. Having regard to the content of the information in question, the Commissioner was not persuaded that the benefit of disclosure would justify or mitigate any prejudice to international relations. The Commissioner found that the public interest in maintaining the exemptions at section 27(1)(c) and section 27(1)(d) outweighed the public interest in disclosure of the requested information.

**Notice of appeal**

19. The grounds of appeal are, in summary:
    a. that the Commissioner did not separately consider the different categories of information, and that section 27 has been interpreted too broadly,
    b. the Commissioner has not struck a proportionate balance between transparency and mitigating any perceived prejudice where other authorities have released similar information,
    c. the third part of the request should have been separately addressed, because its bearing on UK interests will be different,
    d. it is not the case that any and all investments or agreements with international partners, and in particular with Gautam Adani and the Adani Group, will be inherently in the best interests of the UK,

e. the Commissioner was wrong to conclude that the public interest favoured withholding the information.

**The Commissioner's response**

20. The Commissioner submitted that the date for assessing the engagement of section 27 and the public interest balance was at the time of the Cabinet Office's response on 12 July 2022.

21. The Commissioner contended that other public authorities' responses to similar requests are irrelevant.

22. The Commissioner refuted the suggestion that he took a blanket approach to the information, which he carefully considered.

23. The Commissioner argued that he was entitled to accept the Cabinet Office's detailed and specific submissions which referred to the content of each part of the withheld information. The Commissioner contended that he correctly acknowledged the Cabinet Office's expertise in assessing the likely diplomatic consequences of disclosure of the withheld information in accordance with **FCO v Information Commissioner and Plowden** [2013] UKUT 275 (AAC)

24. The Commissioner submitted that he had considered all parts of the request. He noted that the withheld information did not include internal correspondence regarding practical arrangements as suggested by the appellant in relation to the third part of the request. The withheld GIS briefing pack is responsive to both parts 2 and 3 of the request.

25. The Commissioner maintained that the prejudice related to the interests which section 27(1) is designed to protect. He said that the UK's interests for the purposes of section 27(1) FOIA cover a broad range of issues including state visits by overseas officials and ministers; international funding matters; and international trade partnerships.

26. The Commissioner argued that the contention that the Cabinet Office's arguments would have been weightier had the Adani Group been a state representative is beside the point. The Commissioner determined that the Cabinet Office's arguments were sufficient to engage section 27, and this is supported by the fact that Mr Adani has been described by the Financial Times as "one of the country's [India's] most politically powerful businesspeople with longstanding ties to Prime Minister Narendra Modi…"

27. In relation to the public interest balance, the Commissioner maintained that he gave appropriate weight to the public interest in disclosure.

28. The Commissioner noted that the withheld information contains no information on the issue of the process by which the sponsorship of the Science Museum came about.

29. In relation to the concerns raised about the Adani group, the Commissioner submitted that there was sufficient detailed information in the public domain to inform public debate on the UK's relations with Mr Adani and the Adani Group without disclosing the withheld information.

**The Cabinet Office's response and addendum**

Section 27(1)(c) and (d) FOIA

30. In relation to the consequences of disclosure, the Cabinet Office stated that it will argue, broadly:

    a. The interests of the United Kingdom abroad, and the promotion or protection by the United Kingdom of its interests abroad would be likely to be harmed by disclosure. This is both specific (in relation to engagement with Mr Adani) and general (in relation to like engagement with other foreign business personalities).

    b. Firstly, it would make relations more difficult if the United Kingdom were to release information which outlines how foreign visits and decisions around them are made, evident in the provision of honest advice from officials. The United Kingdom would be disadvantaged in discussions and negotiations with foreign counterparts if those counterparts were to become aware how the United Kingdom prepares for such meetings, and in the instant case see what the United Kingdom's aims and priorities are.

    c. Secondly, the withheld material was prepared in the expectation it would be treated as confidential. There is a real risk flowing from disclosure that prominent foreign business personalities would no longer be willing to discuss official business with UK representatives. Concern about confidentiality and any other access limits which might flow from such concerns would threaten relations with Mr Adani and more generally, the potential for overseas companies to invest in the UK. It would further harm the ability of UK officials to test and explore that possibility in private discussion.

    d. It is observed that the Appellant argues for the importance of due diligence checks on third parties and foreign stakeholder disclosure, which would generally be harmed by acts which would inhibit or make less effective United Kingdom access to those third parties. Disclosure would be likely to cause that harm.

31. The Cabinet Office argued that those harms were of a type that section 27 was designed to protect against and that the causal link is established.

32. In relation to the public interest the Cabinet Office accepted that there was a general public interest in openness and in disclosing information relating to meetings with the then Prime Minister but submitted that this was outweighed by the strong public interest in avoiding harm to the United Kingdom's interests abroad or the promotion or protection of those interests abroad.

Section 36(2)(b)(i) and (2)(c) FOIA - inhibit the provision of advice or exchanges of views, or otherwise prejudice the effective conduct of public affairs

33. The Cabinet Office noted that the opinion of the qualified person was to be afforded a measure of respect. The Cabinet Office submitted that it is important that a Minister can benefit from confidential, free and frank official advice and information ahead of meetings in the form of briefings. In addition, disclosure would otherwise prejudice the effective conduct of public affairs by impairing the preparations for diplomatic engagements by senior Ministers. The Cabinet Office submitted that such work requires a confidential space.

34. The Cabinet Office submitted that it is not in the public interest for officials to be dissuaded from the provision of free and frank advice and views. It is in the public interest for Ministers to be effective in their meetings with prominent international business personalities, best supporting an outcome which is beneficial to the UK; and to effectively utilise any deliberative process by discussing matters with senior individuals in industry.

Aggregation of the public interest

35. The Cabinet Office noted that the Court of Appeal confirmed in **Dept for Business and Trade v IC and Montague** [2023] EWCA Civ 1378 that, when multiple FOIA exemptions are engaged by a single piece of information, the separate public interests in maintaining those different exemptions may be aggregated and considered together when weighing them against the public interest in disclosure.

**The appellant's reply**

36. The appellant submitted as follows:
    a. The tribunal decides the issues de novo.
    b. The information in issue is not limited to the two briefing packs and the DIT letter. It is not accepted by the appellant that no other information was held.

c. The Responses rely on generic concerns which are misplaced. They wrongly conflate or elide the private individual and the private company related to the requested information with the sovereign state of India.
d. No qualified person has provided their opinion, and such an opinion would not be reasonable in the circumstances.

37. The appellant submitted that the activities of Mr Gautam Adani and the Adani Group mean that there is a significant and weighty public interest in disclosure of the requested information. That public interest arises from, amongst other things, the involvement of Mr Adani and the Adani Group in fossil fuels, weapons manufacturing and human rights violations. The appellant submitted that the sponsorship of the Science Museum Energy Revolution Gallery is a notably egregious example of 'greenwashing'.

38. The appellant submitted that the public interest in withholding the requested Information is reduced where, amongst other things, it relates to the activities of a controversial and high-profile private individual and private commercial group, and not (as the Cabinet Office and the Commissioner wrongly suggest) the sovereign state of India.

**Submissions of the Commissioner in relation to the additional information located by the Cabinet Office**

39. The Commissioner contended that the tribunal should deal with the additional information and agreed with the Cabinet Office on the application of section 27 and section 35.

**Legal framework**

Section 27

40. Section 27(1) provides:

> "(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice–
> (a) relations between the United Kingdom and any other State,
> (b) relations between the United Kingdom and any international organisation or international court,
> (c) the interests of the United Kingdom abroad, or
> (d) the promotion or protection by the United Kingdom of its interests abroad. "

41. The exemption is prejudice based. 'Would or would be likely to' means that the prejudice is more probable than not or that there is a real and significant risk of prejudice. The public authority must show that there is some causative link between the potential disclosure and the prejudice and that the prejudice is real,

actual or of substance. The harm must relate to the interests protected by the exemption.

42. Section 27 is not an absolute exemption and therefore under s 27(1) the tribunal must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 36

70. Section 36 provides in material part that:

> "36 Prejudice to effective conduct of public affairs
>
> (1) This section applies to—
>
> (a) information which is held by a government department … and is not exempt information by virtue of section 35, and …
>
> (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act…
>
> (b) would, or would be likely to, inhibit—
>
> (i) the free and frank provision of advice, or
>
> …
>
> (c) would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs."

43. It is for the tribunal to assess whether the qualified person's (QP's) opinion that any of the listed prejudices/inhibitions would or would be likely to occur is reasonable, but that opinion ought to be afforded a measure of respect: **Information Commissioner v Malnick** [2018] UKUT 72 (AAC), [2018] AACR 29 at paragraphs 28-29 and 47.

44. In relation to 'chilling effect' arguments, the tribunal is assisted by the following paragraphs from the Upper Tribunal decision in **Davies v IC and The Cabinet Office [2019]** UKUT 185 (AAC):

> "25. There is a substantial body of case law which establishes that assertions of a "chilling effect" on provision of advice, exchange of views or effective conduct of public affairs are to be treated with some caution. In **Department for Education and Skills v Information Commissioner and**

**Evening Standard** EA/2006/0006, the First-tier Tribunal commented at [75(vii)] as follows:

> "In judging the likely consequences of disclosure on officials' future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil servants since the Northcote-Trevelyan reforms. These are highly-educated and politically sophisticated public servants who well understand the importance of their impartial role as counsellors to ministers of conflicting convictions. The most senior officials are frequently identified before select committees, putting forward their department's position, whether or not it is their own."

26. Although not binding on us, this is an observation of obvious common sense with which we agree. A three judge panel of the Upper Tribunal expressed a similar view in **DEFRA v Information Commissioner and Badger Trust** [2014] UKUT 526 (AC) at [75], when concluding that it was not satisfied that disclosure would inhibit important discussions at a senior level:

> "75. We are not persuaded that persons of the calibre required to add value to decision making of the type involved in this case by having robust discussions would be inhibited by the prospect of disclosure when the public interest balance came down in favour of it...
>
> 76. ...They and other organisations engage with, or must be assumed to have engaged with, public authorities in the full knowledge that Parliament has passed the FOIA and the Secretary of State has made the EIR. Participants in such boards cannot expect to be able to bend the rules."

27. In **Department of Health v Information Commissioner and Lewis** [2015] UKUT 0159 (AAC), [2017] AACR 30 Charles J discussed the correct approach where a government department asserts that disclosure of information would have a "chilling" effect or be detrimental to the "safe space" within which policy formulation takes place, as to which he said:

> "27. ...The lack of a right guaranteeing non-disclosure of information ...means that that information is at risk of disclosure in the overall public interest ... As soon as this qualification is factored into the candour argument (or the relevant parts of the safe space or chilling effect arguments), it is immediately apparent that it highlights a weakness in it. This is because the argument cannot be founded on an expectation that the relevant communications will not be so disclosed. It follows that ... a person taking part in the discussions will appreciate that the greater the public interest in the disclosure of confidential,

> candid and frank exchanges, the more likely it is that they will be disclosed...
>
> 28. ...any properly informed person will know that information held by a public authority is at risk of disclosure in the public interest.
>
> 29. ... In my view, evidence or reasoning in support of the safe space or chilling effect argument in respect of a FOIA request that does not address in a properly reasoned, balanced and objective way:
>
> i) this weakness, ... is flawed."

28. Charles J discussed the correct approach to addressing the competing public interests in disclosure of information where section 35 of FOIA (information relating to formulation of government policy, etc) is engaged. Applying the decision in **APPGER** at [74] – [76] and [146] – [152], when assessing the competing public interests under FOIA the correct approach includes identifying the actual harm or prejudice which weighs against disclosure. This requires an appropriately detailed identification, proof, explanation and examination of the likely harm or prejudice.

29. Section 35 of FOIA, with which the Lewis case was concerned, does not contain the threshold provision of the qualified person's opinion, but these observations by Charles J are concerned with the approach to deciding whether disclosure is likely to have a chilling effect and we consider that they are also relevant to the approach to an assessment by the qualified person of a likely chilling effect under section 36(2) and so to the question whether that opinion is a reasonable one.

30. Charles J said at [69] that the First-tier Tribunal's decision should include matters such as identification of the relevant facts, and consideration of "the adequacy of the evidence base for the arguments founding expressions of opinion". He took into account (see [68]) that the assessment must have regard to the expertise of the relevant witnesses or authors of reports, much as the qualified person's opinion is to be afforded a measure of respect given their seniority and the fact that they will be well placed to make the judgment under section 36(2) – as to which see **Malnick** at [29]. In our judgment Charles J's approach in **Lewis** applies equally to an assessment of the reasonableness of the qualified person's opinion as long as it is recognised that a) the qualified person is particularly well placed to make the assessment in question, and b) under section 36 the tribunal's task is to decide whether that person's opinion is substantively reasonable rather than to decide for itself whether the asserted prejudice is likely to occur. Mr Lockley agreed that the considerations identified by Charles J were relevant. We acknowledge that the application of this guidance will depend on the particular factual

context and the particular factual context of the **Lewis** case, but that does not detract from the value of the approach identified there."

45. It is not an absolute exemption and therefore the public interest balancing test applies.

**The role of the tribunal**

46. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

**Evidence**

47. We had before us:
    a. An open bundle
    b. Two supplementary open bundles
    c. Three closed bundles.

48. In accordance with our duty under **Browning** we considered whether it was necessary to withhold the information in the closed bundles from the appellant. We were satisfied that it was necessary to withhold most of the information from the appellant in order to avoid defeating the purposes of the proceedings. We raised concerns with Mr. Waldegrave as to whether it was necessary to withhold the redacted sections of the submission to the qualified person. Mr. Waldegrave took instructions and a version removing the majority of the redactions was supplied to the appellant during the hearing. We are satisfied that it is necessary to withhold the remainder of the closed information from the appellant.

49. We heard open evidence from Dr Garrard and open and closed evidence from William Gelling, Political Director in the Northern Ireland Office and formerly the Prime Minister's Private Secretary for Foreign Affairs.

50. The following gist of the closed session was prepared by Mr. Waldegrave and approved by the tribunal:

    **"CLOSED EVIDENCE**

    1. Mr. Gelling confirmed the accuracy of the closed parts of his two Witness Statements.

    2. Mr. Waldegrave noted that Mr. Jackson had put it to Mr. Gelling in cross-examination that the redacted information in scope of the request was being withheld essentially because of concerns about

"setting a precedent". Mr. Gelling explained that this was one of the reasons for withholding the material, but not the only one. Mr. Waldegrave also asked one clarificatory question in relation to one of the redacted passages in the Visit Briefing Pack.

3. At the request of the tribunal, Mr. Gelling explained the sensitivity of each of the redacted passages. In summary his evidence was as follows:

(1) Revelation of the first redacted passage in the GIS Briefing Pack **[FSHB/223]** [*referred to in this decision as the first redaction*] would prejudice the UK's relations with individuals in a position comparable to Mr. Adani. Although Mr. Adani is particularly wealthy, there are others who are in comparable positions. Mr. Gelling also explained that disclosure would prejudice the UK's relationship with India. Although he accepted that Mr. Adani was not a member of the Indian government, his prominence in India meant that these difficulties could nevertheless arise.

(2) Revelation of the second redacted passage in the GIS Briefing Pack **[FSHB/223]** [*referred to in this decision as the second redaction*] would prejudice the UK's relations with countries other than India. Mr. Gelling accepted that there is some overlap between the content of this passage and some of the material in the BEIS Clutch Card, but there are important differences in the way the points are expressed and the level of detail offered which mean that disclosure of this passage would prejudice the UK's interests.

(3) Revelation of the first redacted passage in the Visit Briefing Pack **[FSHB/230]** [*referred to in this decision as the third redaction*] would prejudice the UK's relationship with India. A redacted passage in Mr. Gelling's Second Witness Statement also explains that revelation of this passage would prejudice the UK's interests by revealing information about how the UK conducts international relations. Mr. Gelling's evidence was that the first part of the redacted passage was significantly more sensitive than the latter part (but maintained that disclosure of the latter part would itself prejudice the UK's interests).

(4) Revelation of the second and third redacted passages in the Visit Briefing Pack [*referred to in this decision as the fourth and fifth redactions*] would (i) prejudice the UK's relationship with India; and (ii) prejudice the UK's relationships with other

countries. The revelation of the third passage would prejudice the UK's interests by revealing information about how the UK conducts international relations.

4. The tribunal asked Mr. Gelling whether the UK's interests would be prejudiced by the revelation of the redacted passages given that the other material in the relevant documents has been disclosed. He confirmed that they would be.

5. The tribunal asked Mr. Gelling whether the Government's dealings with Mr. Adani could be regarded as wholly exceptional given his wealth and connections, such that the release of the redacted passages would not prejudice its dealings with other individuals or nations. Mr. Gelling explained that there are many other individuals in a comparable position (in terms of wealth and connections), and inferences could be drawn from the disclosure of the redacted passages which would affect the UK's international relations.

**CLOSED SUBMISSIONS**

6. Mr. Waldegrave made submissions to the tribunal in relation to (in turn) (i) the section 27 exemptions; (ii) the section 36 exemptions; (iii) the public interest test; and (iv) the material which has been withheld as being out of scope.

7. In relation to section 27, Mr. Waldegrave submitted that Mr. Gelling had explained why the revelation of the five passages would prejudice the UK's interests. He submitted that it was not for the appellant or the tribunal to second-guess the executive's assessment of the impact on the UK's interests abroad of disclosure. He also addressed the five arguments set out in the appellant's Skeleton Argument at paragraph [45] and explained why these are not well-founded, in view of the evidence. In particular, Mr. Waldegrave submitted that Dr. Garrard does not have the knowledge or the expertise to cast doubt on Mr. Gelling's evidence.

8. In relation to section 36, Mr. Waldegrave took the tribunal to the closed version of the Submission to the qualified person **[OPEN/140]** and the email which was sent in response **[OPEN/147]**. He drew the tribunal's attention, in particular, to paragraphs [14], [16], and [18] of the Submission. Subject to minor exceptions, an unredacted version of the Submission has now been provided to the appellant. Mr. Waldegrave submitted that the qualified person was presented with arguments as to why the section 36 exemptions might or might not apply and that in view of this her opinion, as recorded in the relevant email, was "reasonable". While ideally it might have been better if

the qualified person had used the tick-box form to record her opinion, the fact that she did not do so did not make her opinion unreasonable.

9. In relation to the public interest test, Mr. Waldegrave relied on Mr. Gelling's oral and written evidence, and the material in the Submission. He submitted that the public interest in disclosure is outweighed by the public interest in maintaining the exemptions. He also briefly submitted that in applying the public interest test the relevant exemptions should be "aggregated" but agreed to address this point further in OPEN submissions.

10. In relation to the material which has been extracted as being outside the scope of the Request, Mr. Waldegrave made clear that he had not read all of this. However, a search for the word "Adani" only showed results (with minor exceptions) in material which had either been disclosed or which was being withheld on the basis of the exemptions. The word "Adani" appeared in three places in material which had been extracted on the basis that it was outside the scope of the Request. Mr. Waldegrave submitted that these passages had properly been extracted as falling outside the scope of the Request.

11. Finally Mr. Waldegrave briefly discussed arrangements with the tribunal for the preparation of this gist."

**Skeleton arguments/further submissions**

Written submissions of the Commissioner

51. The Commissioner provided short written submissions dated 15 January 2025 as follows:

> "The Commissioner would wish to highlight that the issue mentioned in §20 of the Second Respondent's submissions dated 13 May 2024 (open bundle page A86): the Court of Appeal's decision on the aggregation of public interest factors in ***Dept for Business and Trade v IC and Montague*** [2023] EWCA Civ 1378 is the subject of a live appeal brought by the Commissioner to the Supreme Court: ***Department for Business and Trade and another (Respondents) v The Information Commissioner (Appellant)*** **UKSC/2023/0178** which is listed for a hearing on 28 January 2025. Accordingly, if the tribunal is not minded to uphold the DN and considers that one or more of the alternative exemptions relied upon by the Second Respondent are engaged, the tribunal may wish to issue its decision following the Supreme Court's decision.
>
> Further, the Commissioner considers that the time at which to consider the application of the exemptions from disclosure and the public interest is the

date of the public authority's response, or if the response is served late, 20 working days following receipt of the request as per the statutory time frame in section 10(1) FOIA: *see* ***Keighley v Information Commissioner & BBC*** *[2023] UKUT 228 (AAC)* at [29], applying the principles in ***Montague v IC*** [2022] UKUT 104 (AAC) at [47]-[90]. The prejudice test, for the purposes of the exemptions in sections 27 and 36 FOIA, falls to be considered at the same time: ***Centre for Animals and Social Justice v Information Commissioner and Department for Environment, Food and Rural Affairs EA/2022/0317***(at [13]).

The Commissioner notes that the relevant opinion of the qualified person was provided in October 2023 being after the Cabinet Office's response to the appellant's request on 13 July 2022. The Commissioner considers that the exemptions in section 36 FOIA can still be engaged if the qualified person's opinion was not given within the statutory time frame providing the qualified person considered the engagement of the section 36 exemptions in the circumstances as they stood on or before 13 July 2022."

Skeleton argument/oral submissions on behalf of Dr Garrard

*Out of scope material*

52. Mr Jackson asked the tribunal to consider whether the out of scope material was properly outside the scope of the request.

*Is further material held?*

53. Mr Jackson noted that no email correspondence had been identified as in scope of the request. He submitted that the legal test is whether further information is held on the balance of probabilities. He submitted that the tribunal's task is to decide, on the basis of our review of all the relevant factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed. Mr Jackson argued that Mr Waldegrave had sought to put a gloss on the test by submitting that the test was whether adequate searches had been conducted. That was relevant to the question of whether the legal test was satisfied in **Bromley v Environment Agency** [2007] UKIT EA/2006/0072 but it is not a substitute for the legal test.

54. On the evidence, Mr Jackson argued, the Cabinet Office is highly likely to be holding further information in scope. The Cabinet Office had conducted further searches in September 2024 on an indicative basis to demonstrate that lots of information would be turned up on a search of that email archive. That is not permitted under FOIA, submitted Mr Jackson. The public authority cannot decide not to comply and try to justify this on an indicative basis. If the Cabinet Office wishes to make that argument, Mr Jackson argued that they have to rely on section 12 so that the tribunal and the Commissioner are in a situation to assess whether the necessary legal test in section 12 is met.

55. Mr Jackson submitted that the tribunal should make a declaration that the Cabinet Office had probably not identified and disclosed all the information it holds and was therefore in breach of section 1(1) FOIA. On questioning from the Judge Mr Jackson accepted that the Cabinet Office could not simply be ordered to disclose the information and would need to be given the opportunity to issue a fresh response.

*Timing*

56. Mr Jackson noted, on the basis of **Montague v Information Commissioner** [2022] UKUT 104 (AAC) and **R (Evans) v Attorney General** [2015] UKSC 21 that when considering an exemption the tribunal must consider the facts as they stood at the time of the refusal of the request, but the tribunal is not limited to matters that the public authority was aware of at the time. It is an objective test. The tribunal can take account of evidence about subsequent events only to the extent that it throws light on the position as it was at that date. He submitted that there is nothing in **Evans** or **Montague** that supports Mr Waldegrave's proposition that the tribunal should in some way assess what was reasonably ascertainable to the public authority at the time. He submitted that would be contrary to the task of the First-tier Tribunal which is to conduct a de novo review. He submitted that there is no principle that only certain categories of evidence are admissible – anything that sheds light on the position that was pertaining at the relevant date is admissible as per the Supreme Court's decision in **Evans**.

57. Mr Jackson argued that the tribunal can take account of the indictment and the complaint by the US Securities and Exchange Commission, because it throws light on the factual position at the date of the refusal. He argued, on the basis of the indictment and the Securities Exchange Commission complaint, that there are serious grounds for believing that the facts alleged existed at the date of the refusal.

58. Mr Jackson argued that even if the indictment and the SEC complaint are ignored, there is still a very strong public interest in disclosure because of the number of well grounded allegations already in the public domain at the relevant date.

*Deference*

59. Mr Jackson accepted that the tribunal should be duly respectful of specific expertise in the area of diplomatic relations in a public authority. He submitted that whilst the foreign office and the Ministry of Defence have specific expertise in the area of diplomatic relations, this does not apply to the executive in general and does not apply strongly to the Cabinet Office.

60. Mr Jackson made clear that he was not suggesting that there should be no respect given to the Cabinet Office's views on whether section 27 was engaged, but that the amount of respect should be reduced compared to what would be shown to the Foreign Office or the Ministry of Defence. Mr Jackson said that the tribunal should fairly scrutinise for itself whether the exemption is engaged and not just take the Cabinet Office's word for it. Mr Jackson said that Mr Gelling's personal experience makes some difference but is not conclusive, because this is a corporate witness statement, drafted with input from a number of individuals and reviewed and signed by the witness.

*Section 27 – international relations*

61. Mr Jackson said that the threshold is whether a material risk of harm is probable. He submitted that the section was not engaged because:

    a. There has been no damage to the UK's interests through disclosure of most of the information originally withheld by the Cabinet Office. It is unlikely that the disclosure of five short additional passages would lead to any material risk of harm. It is difficult to see how the disclosed information could ever have been prejudicial. Mr Jackson further submitted that the overlap between what has been disclosed and the second passage suggests that there is no material risk of harm. Mr Gelling accepted that there was no reason why the passage of few months between September and February should make a difference compared to more than two years between July 2022 and September 2024. The change of administration occurred in July 2024 more than two months before Mr Gelling's witness statement supporting the withholding of all the information, and Mr Jackson argued that it is difficult to see how such a change would affect the UK's desire for positive international relations. Mr Jackson said that the lack of a good reason for the change in position means that the tribunal should be sceptical of scaremongering by the Cabinet Office in relation to the remaining passages. He said that exactly the same points are being made in relation to the remaining information as were made in September in relation to all the information.

    b. The circumstances of this case are truly unique and exceptional because Mr Adani and the Adani group are being prosecuted for orchestrating one of the largest alleged bribery schemes in modern history, which is alleged to have been taking place at the same time he met with the Prime Minister. Mr Jackson highlighted a number of instances of countries distancing themselves from Mr Adani following the allegations. No reasonable international partner would see disclosure in these unique circumstances as setting some kind of precedent.

    c. The UK's business relationships with India are broad and stable. It is in the interests of international businesses to invest in the UK. It is fanciful

to suggest that disclosing the five withheld passages would be likely to materially risk those interests.

d. To the extent that the information relates to the sponsorship of the Science Museum there is no reason why disclosure would impose on international relations.

e. It is wrong to conflate relations with Mr Adani with relations with the state of India. Section 27 is directed at inter-state relations and is not intended to encompass commercial interests, which are dealt with in section 43.

*Section 36*

62. Mr Jackson submitted that the advice provided to the qualified person was similar to that provided in **Davies v Information Commissioner and the Cabinet Office** [2019] UKUT 185 (AAC). He submitted that the opinion was not substantively reasonable for reasons similar to those given by the Upper Tribunal in **Davies.** The advice in the submission did not, Mr Jackson argued, provide sufficient factual or reasoned basis for concluding that the relevant prejudice would or would be likely to be caused by disclosure.

63. Paragraph 14 of the submission, he submitted, is simply an assertion of prejudice with no explanation for why that would be likely to happen. The letters referred to in paragraph 15 have already been disclosed, which should make the tribunal cautious about the rest of the advice. Paragraph 16 was also, in Mr Jackson's submission, unreasoned assertion.

64. Mr Jackson's second point was that no opinion had been given by the qualified person. The submission asks the qualified person whether they consider that the information is subject to the exemption and specifically whether they consider that disclosure satisfies the statutory test, which is set out. It then provides a template which is said to be to ensure that there is a clear understanding of the reasonable opinion and the rationale.

65. Mr Jackson noted that the template was blank. He submitted that this was not a question of form over substance. The form includes the statutory language and demonstrates for the tribunal that the requisite opinion has been formed. Instead, the Minister states in an email that she 'agrees to apply the exemption'. Mr Jackson submitted that was not sufficient to satisfy the statutory test.

66. Mr Jackson argued that you cannot logically draw a line from an opinion that the whole of the information engages section 36 to an opinion that a specific subset, i.e. the remaining information, engages section 36. The qualified person's opinion does not explicitly address the 5 passages now withheld. Mr Jackson submitted that we simply do not know what the qualified person's view would

be in relation to those 5 specific passages. It is not focussed on the information that is now in issue before the tribunal.

*Public interest balancing test*

67. In the light of the expected Supreme Court decision in **Montague**, Mr Jackson suggested that, to the extent it makes a difference to the decision, the tribunal make alternative findings in relation to aggregation.

68. Mr Jackson submitted that if the exemptions are engaged, whether or not the exemptions are aggregated, they are outweighed by the public interest in disclosure for the following reasons:

    a. These meetings involved the most senior UK politician approaching a private business person and offering support, in effect saying what can the UK government do to assist.
    b. There are strong grounds for believing that Mr Adani was at the time of the meetings managing one of the largest bribery schemes in the world.
    c. Even if the alleged bribery scheme is not taken into account, there are longstanding and well evidenced corruption concerns in relation to Mr Adani and the Adani group.
    d. There is a strong public interest in one of the world's largest fossil fuel companies, involved in highly controversial projects like the Carmichael coal mine in Australia, sponsoring a green energy exhibition at an institution of public importance such as the Science Museum.
    e. It is submitted that the Science Museum professes adherence to the Museum's Code of Practice but has not lived up to those goals in relation to sponsorship by Mr Adani.

69. In relation to the public interest in withholding the information, Mr Jackson submitted that if the exemptions are engaged, they are only weakly engaged. Further he submitted that any arguments made by the Cabinet Office have to be seen in the context that they have already voluntarily disclosed the majority of the documents.

Skeleton argument/oral submissions on behalf of the Cabinet Office

70. Mr Waldegrave identified four main issues for the tribunal to resolve:
    a. Has the Cabinet Office conducted appropriate searches for information falling within the scope of the request?
    b. Is the Cabinet Office correct in its identification of material outside the scope of the request?
    c. Is the material redated on the basis of section 27(1)(c) and (d) exempt?
    d. Is the material redacted on the basis of section 36(2)(b)(i) and (c) exempt?

*Has the Cabinet Office conducted appropriate searches?*

71. Mr Waldegrave emphasised that the question of whether the Cabinet Office is likely to be holding relevant information beyond that which has already been disclosed has to be based on a review of all the factors set out in **Bromley,** including the quality of the public authority's initial analysis of the request, the scope of the search it decided to conduct on the basis of that analysis and the rigour and efficiency with which that search was conducted. He submitted that the question of whether further information is likely to be held should not be approached in a completely open ended or abstract way but should focus on what the Cabinet Office has actually done in terms of searches and assess whether those searches and the process of identifying information in scope of the request meets the relevant standard.

72. Mr Gelling explained in evidence what locations were searched, why those locations were selected and how further information was located and disclosed. Mr Waldegrave submitted that the Cabinet Office followed paragraph 6.8 of the code of practice in focussing on the PM Post repository, because it was the location most likely to hold the relevant information. He said that emails are moved into the archive if not marked for preservation and that material is most likely to be so marked if it is non-ephemeral. Thus, emails discussing logistics for a meeting may well be regarded as ephemeral and therefore not marked for preservation and moved to the email archive. That is why the searches of the PM Post repository did not identify that sort of information. He noted that Mr Gelling's witness statement explained that the material originally held in the PM Post repository had been transferred to a different repository, in which new searches had revealed the additional documents that had been located.

73. Key word searches were carried out of the email archive which produced 1500 to 1600 results which were not reviewed because it would have taken a very long time to review and is, by definition, highly likely to contain only ephemeral material.

74. In relation to the categories of information identified by the appellant as undisclosed but likely to exist, Mr Waldegrave submitted as follows. In relation to internal Cabinet Office emails and communications with the Adani group about logistics, he relied on his previous submissions in relation to why that information had not been identified. In relation to readouts, he noted Mr Gelling's evidence that the DIT letters *were* the readouts.

75. Mr Waldegrave reminded the tribunal that the appellant is entitled, subject to any exemptions, to information not documents. He submitted that the obligation on the Cabinet Office was to locate the information it holds which is the subject of the request and not every single document.

76. He submitted the tribunal needs to ask itself is, in view of the searches that have been conducted, that the Cabinet Office says are of the requisite standard, is it

really likely that there is further information, rather any further document, that is within the scope of the request. The Cabinet Office say, on the balance of probabilities and having regard to the factors in **Bromley**, the answer is no.

77. The Judge raised the question of whether part of the information requested is information about arrangements. Mr Waldegrave said that if the request is framed in somewhat ambiguous terms and the public authority interpreted in a reasonable way that was enough, but he accepted that the Cabinet Office had not articulated the position that they had interpreted the scope of the request as not including information about arrangements.

*Section 27*

78. Mr Waldegrave submitted that where international relations are concerned, 'prejudice' may consist of anything that 'makes relations more difficult or calls for a particular diplomatic response to contain or limit damage which would not otherwise have been necessary' (from a decision of the Information Tribunal in **Campaign Against Arms Trade v. Information Commissioner** [2008] UKIT EA 2006 0040). Mr Waldegrave submitted, on the basis of that case, that the concept of prejudice under section 27 is very broad and includes the risk of such a situation arising.

79. Mr Waldegrave argued that it is clear that the tribunal should recognise the superior experience of the executive when it comes to the consequences of disclosure. He said that Mr Jackson was wrong to assert that this applies to a lesser extent in relation to departments other than the Foreign Office and the Ministry of Defence. It applies to the executive branch of government as a whole. He submitted further that foreign policy expertise is not limited to those departments. He noted that Mr Gelling is a member of the diplomatic service in any event. He stated that Mr Gelling's role is to provide a corporate witness statement, so it is not absolutely essential that he has the relevant personal experience, but if that is important, then Mr Waldegrave submitted that he had it.

80. Mr Waldegrave submitted that the fact that much of the information has been disclosed and, as far as we know, no damage has occurred, does not address the potential consequences of disclosing the remaining information.

81. Mr Waldegrave submitted that the evidence of alleged large scale corruption activities is not relevant, and even if it is it does not make much difference.

82. In relation to the broad and stable relationship between the UK and India, Mr Waldegrave noted that the Cabinet Office did not have to show fundamental damage, it was enough to establish that there is a real risk that difficulties would be caused.

83. Mr Waldegrave noted that the extent to which the withheld material concerns the sponsorship of the Science Museum was addressed in the closed session.

84. Mr Waldegrave submitted that the relevant parts of section 27 are not limited to prejudice which might be caused in terms of UK relationships with other states. The UK's 'interests abroad' are wider than relationships with other states and includes, for example, commercial interests in another country.

*Section 36*

85. Mr Waldegrave sought to persuade us that Mr Jackson was making a 'form over substance' point in relation to the submission that the qualified person had not expressed an opinion at all because they had not ticked the boxes on the pro forma. Mr Waldegrave accepted that, based on the email, it is not possible to tell whether the qualified person thought that disclosure 'would' or 'would be likely' to prejudice the relevant matter, but submitted that was irrelevant because it is clear that the qualified person was at least satisfied that the lower threshold was reached. He noted that in **Davies** the Minister's response was conveyed by email and there was no suggestion that the Minister had not given an opinion.

86. In relation to the reasonableness of the opinion, Mr Waldegrave submitted that the submission provided to the qualified person was different from that provided in **Davies** because it included counter arguments.

87. In relation to the fact that the opinion had been expressed in relation to the material as a whole, most of which had now been disclosed, Mr Waldegrave submitted that the opinion as a whole is reasonable, and the bits that have now been withheld are those which give rise to particular sensitivities. Mr Waldegrave noted that the Cabinet Office does not accept that they were wrong to apply the exemptions to the whole of the material, and disclosure had been made on a without prejudice basis. He submitted that if the opinion is reasonable in relation to the material as a whole then it must necessarily be reasonable in relation to part of the material.

*Public interest*

88. Mr Waldegrave noted that it was agreed that the position had to be assessed in July 2022 when the Cabinet Office refused to provide the information. Mr Waldegrave submitted that, in accordance with **Evans**, evidence that has a direct bearing on the actual grounds given for refusal, but which is only produced later can be taken into account. He accepted, for example that if Dr Garrard had produced expert evidence concerning the UK's relationship with India at the relevant date that could be taken into account. Mr Waldegrave argued that this was permissible because, if the authority had wanted to, they could have obtained that expert evidence at the time.

89. He submitted that **Evans** cannot mean that something that may have been happening at the time, but which was not known about and could not possibly have been known about can subsequently be taken into account when the refusal is litigated. Mr Waldegrave submitted that if that was right it would render the rule that the position must be considered at the time of the refusal effectively meaningless.

90. Mr Waldegrave submitted that it is not wide enough to include *any* matters occurring after the relevant date in so far as they cast light on the grounds now given for refusal. It cannot include material which reveals facts that were not ascertainable in any reasonable way at the time, because that, Mr Waldegrave submitted, is simply too broad.

91. Mr Waldegrave argued, in any event, that the evidence of the indictment and the SEC complaint makes no difference. He submitted that these were only allegations, that there were already other allegations relating to Mr Adani in the public domain at the time and that the reasons for withholding the information do not depend on Mr Adani being, in every way, beyond reproach.

92. In relation to aggregation, Mr Waldegrave said that it may not make much difference, but that if the tribunal thought it did, he agreed with Mr Jackson's suggested approach of setting out alternative views.

93. Mr Waldegrave accepted that Dr Garrard had some knowledge in relation to some matters which are relevant in this case, but he by no means had comprehensive expertise.

94. Mr Waldegrave noted that a number of the public interest arguments relied on by Mr Jackson related to the Science Museum or museums generally. He said that to the extent that the material in question does not really relate to the Science Museum, those arguments for disclosure do not go anywhere.

95. We also heard closed submissions from Mr Waldegrave.

**Issues**

96. The issues for the tribunal to determine are:

    a. On the balance of probabilities, does the Cabinet Office hold further information in scope of the request?
    b. Is the information in CB2 outside the scope of the request?
    c. Would disclosure of the withheld information prejudice the interests of the United Kingdom abroad or the promotion or protection by the United Kingdom of its interests abroad?
    d. In the reasonable opinion of a qualified person, would disclosure of the information be likely to inhibit the free and frank provision of

advice, or would be likely otherwise to prejudice, the effective conduct of public affairs?

e. Does the public interest in maintaining any exemptions that are engaged outweigh the public interest in disclosure?

**Discussion and conclusions**

Is further information held?

97. A large number of positive results were obtained on a keyword search of the email archive. These have not been reviewed by the Cabinet Office because it would have taken a very long time to review them, and because they are highly likely to be 'ephemeral' material.

98. The scope of a request is determined objectively but in context. It is useful to set out the wording of the request again here:

> "Please confirm whether you hold any of the following recorded information relating to the following specified events, and to then disclose copies of the material specified beneath in each case:
>
> 1. Prime Minister Boris Johnson's meeting with Gautam Adani at Adani HQ in Gujarat on April 21st 2022.
>
> 2. Prime Minister Boris Johnson's meeting with Gautam Adani at the Global Investment Summit at the Science Museum on 19th October 2021.
>
> 3. The announcement of Adani Green Energy's sponsorship of the Science Museum's new 'Energy Revolution' Gallery on 19th October 2021.
>
> In each case, please disclose copies of:
>
> - Any briefing notes or readouts that were created for the events specified
>
> - Internal correspondence within the Cabinet Office which discusses arrangements for the events specified above
>
> - Correspondence with staff from the Adani Group (or its subsidiaries) concerning arrangements for the events above, including both relevant ministerial and management team members that were involved in any such correspondence."

99. Mr Waldegrave submitted that the scope of the request does not cover 'ephemeral' correspondence which would have been placed in the email archive.

100. It is right that a request is for information, and not for documents, but looked at objectively we find that the wording of the request clearly covers information about the arrangements for the meetings.

101. The request starts with a broad request covering all information 'relating' to three events (two meetings and an announcement). That is wide enough to capture all information on the arrangements for those events.

102. Dr Garrard then identifies that he only wants that information if it is contained in certain categories of document. That narrows the range of documents that the Cabinet Office needs to search for the request information. One of the categories is correspondence, both internal and external, that discusses 'arrangements' for the events. In our view it is clear that part of the information requested is information about the arrangements for the event.

103. In our view, on any reasonable reading of the request, information about arrangements for those events held in emails in the email archive is likely to fall within the scope of the request.

104. The evidence from the Cabinet Office shows that 'ephemeral emails', including emails about arrangements for the two meetings, would have been put into the archive. A search using relevant key words produced a large member of positive results. We find on that basis, on the balance of probabilities, that at least some of those emails will fall within the scope of the request.

105. The fact that search results would take a long time to review does not take information outside the scope of a request. It may be possible to narrow the search, because the request is limited to information contained in correspondence discussing 'arrangements' for the events. Although 'arrangements' is likely to be broader than simply timings and may include, for example, discussions about what information is to be given to the Prime Minister, it will not include all emails that mention the word 'Adani'. The Cabinet Office may also be able to suggest ways in which the appellant could narrow his request in accordance with the duty to provide advice and assistance. Section 12 can be relied on if appropriate.

106. In summary we conclude that the Cabinet Office holds further information within the scope of the request, and we have ordered that a fresh search be carried out.

Material said to be out of scope

107. We have reviewed the documents in CB3 and in relation to the vast majority of the material we are satisfied that the Cabinet Office has identified all material within the scope of the request. We considered two small sections that were potentially in scope and have determined that one is within the scope of the request, and one is outside the scope of the request. Our reasoning is set out in the closed annex.

108. In relation to the small amount of material in scope, we have required the Cabinet office to issue a fresh response.

Overarching points in relation to the exemptions relied on

*Deference*

109. We do not accept that the principle that we should pay due deference in matters of internation relations is limited to specific government departments such as the foreign office and the MOD. Any government department has the means at its disposal to pull on expertise in relation to international relations.

110. However, under section 27 Parliament has entrusted the tribunal with determining whether or not disclosure would or would be likely to prejudice international relations. Whilst we pay due deference to the views of the executive in the form of the particular government department in question, they must explain fully the basis for those views because the decision is ultimately one for the tribunal to take.

111. The position under section 36 is different because Parliament has taken a different approach to the engagement of the exemption, but in relation to the public interest balance under section 36 the tribunal takes a similar approach to deference to that set out above, and accords due weight to the opinion of the qualified person.

*Timing*

112. The relevant date for assessing the public interest balance is July 2022 when the Cabinet Office refused to provide the information. This was agreed and in accordance with authority.

113. Evidence of later events can only be taken into account insofar as they cast light on the position at the relevant date. Lord Neuberger said the following in **R (Evans) v Attorney General** [2015] UKSC 21 at paragraph 73:

> "… although the question whether to uphold or overturn (under section 50 or sections 57 and 58) a refusal by a public authority must

be determined as at the date of the original refusal, facts and matters and even grounds of exemption may, subject to the control of the Commissioner or the tribunal, be admissible even though they were not in the mind of the individual responsible for the refusal or communicated at the time of the refusal to disclose (i) if they existed at the date of the refusal, or (ii) if they did not exist at that date, but only in so far as they throw light on the grounds now given for refusal…"

114. Mr. Waldegrave submitted that (ii) above, could not be construed as permitting the tribunal to taken account of any subsequent events that throw light on the grounds given for refusal. He submitted that that would be too broad and would render meaningless the requirement to determining the question 'as at the date of the refusal'.

115. That may be right, but in this appeal Mr. Jackson relies on the indictment and the complaint by the US Securities and Exchange Commission, because they cast light on the factual position as it was at the date of the refusal. That does not rely on a broad construction of **Evans,** is squarely within the principle as approved by the Upper Tribunal in **Montague** and carries no risk of rendering the time limitation meaningless.

116. Mr. Jackson submitted that he was simply asking the tribunal to take account of subsequent events that shed light on the factual position that existed at the date, in accordance with authority.

117. We agree with Mr Jackson that there is no basis to imply into or infer from the authorities any limitation on the type of evidence that the tribunal is permitted to take into account (i.e. expert or similar evidence). Similarly, we do not accept that it is right to introduce any requirement that these must be facts that would have been reasonably ascertainable to the particular public authority at the time. There is no basis in the authorities for such a requirement and it is unnecessary and undesirable for the tribunal to have to hear evidence and make findings on what this particular public authority might or might not have been able to find out at the time.

Section 27

*The scope of section 27*

118. Both Mr. Jackson and Mr. Waldegrave made submissions on the scope pf section 27. It is not necessary for us to decide, in principle, how broadly 'the interests of the United Kingdom abroad' should be construed and whether section 27 is limited to 'international relations' as usually understood. Our reasoning, set out where necessary in closed, explains why the particular paragraph of section 27 is or is not engaged. None of our decisions are based

on harm to relationships with private individuals or on the commercial interests of the UK abroad and the basis for our decision fits squarely within what would generally be viewed as 'international relations'.

*Is section 27 engaged?*

119. Much of our reasoning on this issue refers to or reveals the content of the redacted passages and is therefore contained in the closed annex.

120. The applicable interest under section 27(1)(c) and (d) is the protection of the interests of the UK abroad. We accept that the claimed prejudice relates to the protected interests and is real and of substance.

121. In relation to the first redaction and part of the second redaction we conclude that section 27(1)(c) is engaged. We accept that there would be likely to be prejudice to the UK's interests abroad on the basis that there is a material risk of an adverse reaction and a material risk to diplomatic relations between the UK government and other states. We accept that disclosure carries sufficient risk such that the exemption is engaged and that there is a causative link between disclosure and the claimed prejudice. In relation to the first paragraph we have concluded that the exemption is only just engaged for the reasons set out in closed.

122. In relation to the remainder of the second redaction we do not accept that there would be likely to be prejudice to the UK's interests abroad or the promotion or protection of the UK's interests abroad as a result of disclosure and therefore the exemption is not engaged.

123. Although the disclosure of the vast majority of the material was expressly without prejudice, Mr Gelling and Mr Waldegrave accepted that these parts of the second redaction were similar to what has now been released and were not able to explain adequately why the Cabinet Office took the view that these particular passages might cause harm, whereas they were content to disclose other very similar passages. Having removed part of the second redaction, in our view the remainder of the passage is relatively banal and does not contain any material that could be described as sensitive. We are not persuaded that this part of the second redaction carries any risk of prejudice to international relations.

124. In relation to part of the third redaction, we accept that disclosure of part of the passage would be likely to lead to a very clear risk of damage to the UK's interests abroad. We are satisfied there would be likely to be prejudice to the UK's interests abroad and that the exemption in section 27(1)(c) is engaged.

125. In relation to the remainder of the third redaction we do not accept that there would be likely to be prejudice to the UK's interests abroad or the promotion

or protection of the UK's interests abroad as a result of disclosure and therefore the exemption is not engaged.

126. In relation to the entirety of the fourth and fifth redactions we accept that disclosure would lead to a very clear risk to the UK's interests abroad. We are satisfied that there would be likely to be prejudice to the UK's interests abroad and that there is the required causative link. We find that section 27(1)(c) is engaged.

Are section 36(2)(b)(i) and section 36 (2)(c) engaged?

127. The Cabinet Office relies on the opinion of the qualified person in relation to section 36(2)(b)(i) (disclosure would be likely to inhibit the free and frank provision of advice) and section 36(2)(c) (disclosure would otherwise be likely to prejudice the effective conduct of public affairs).

128. The purpose of these sections is to protect the free and frank provision of advice and the effective conduct of public affairs.

129. We have only gone on to consider section 36 in relation to the passages which we have determined the Cabinet Office is not entitled to withhold under section 27.

*Is there an opinion under section 36?*

130. The qualified person, Baroness Neville-Rolfe, Minister for the Cabinet Office, was provided with a copy of the information that the Cabinet Office had initially identified as falling within the scope of section 36 and a submission drafted by Cabinet Office officials.

131. At that stage the Cabinet Office intended to withhold all the information in scope, and therefore that was the information addressed in the submission and in relation to which the opinion was sought.

132. The submission made clear that the Minister needed to form a reasonable opinion on which the threshold was reached i.e. whether the prejudice would or would be likely to occur. This appears in paragraph 8 of the submission. This is rather misleadingly described as forming an opinion as to the 'severity' of prejudice, but it is clear from that paragraph that the Minister is being asked to form an opinion in relation to likelihood of prejudice occurring.

133. The submission also made clear that the Minister was only being asked to give an opinion on whether the exemption was engaged, not on the public interest balance.

134. The submission then set out at a high level the arguments that section 36 may and may not be engaged, without reference to the content of the withheld information.

135. The submission then asked the qualified person to give her opinion as follows:

> "**As the qualified person, do you consider the information in scope to be subject to the exemptions set out in section 36(2)(b)(i) and/or section 36(2)(b)(ii) and/or section 36(2)(c) of the Act? Specifically, do you consider that the disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice, and/or the free and frank exchange of views for the purposes of deliberation and/or would otherwise prejudice the effective conduct of public affairs?** The template at Annex B has been provided to ensure we have a clear understanding of your reasonable opinion and the rationale for it."

136. The Minister replied in an email dated 16 October 2023 (OB/B146) as follows:

> "The Minister has reviewed the submission and agrees to apply the exemption at S36(2)(b)(i), (ii) and (c) to the information in scope."

137. It is unfortunate that the Minister chose not to use the template at Annex B. That is not because a qualified person's opinion needs to be provided in a particular format. There is no difficulty in an opinion being recorded in an email or any other format. It is unfortunate for two reasons.

138. First, the template provided boxes to tick to indicate whether the Minister had concluded that the relevant prejudice or inhibition would *or* would be likely to occur. There is no indication of the likelihood of prejudice in the email, even though the submission to the Minister specifically stated, at paragraph 17:

> "In reaching a reasonable opinion, the qualified person must be able to identify whether the prejudices in section 36(2)(b)(i), (ii) or (c) of the Act either would occur, or would be likely to occur. The reasonable opinion should identify the relevant provision of section 36 of the Act and the relevant threshold of the prejudice."

139. Second, the template included a section for the Minister to 'include detail of why section 36 is engaged'. There is no detail or any explanation in the email explaining why the Minister considered that section 36 was engaged.

140. Mr. Jackson submitted that the email, which records that the Minister 'agrees to apply the exemption S36(2)(b)(i), (ii) and (c) to the information' does not satisfy the statutory test.

141. We are prepared to infer from the statement in the email that the Minister, having read the submission which included the correct statutory test, and having had sight of the information, must have formed the opinion that the information either would or would be likely to cause the relevant prejudice or inhibition set out in the submission. We reach this conclusion taking into account the seniority of the Minister.

142. We do not know which threshold the Minister considered was satisfied, but we are prepared to infer, based on the fact that the Minister had read the submission and had 'agreed to apply' the exemptions, that the Minister must at least have considered that the lower threshold was satisfied, i.e. that the relevant prejudice or inhibition would be likely to occur.

*Is that opinion reasonable?*

143. In considering the reasonableness of the opinion of the qualified person, we take account of the seniority of the Minister and the fact that the Minister is well-placed to make the assessment. We recognise that Parliament has chosen to confer responsibility on the qualified person for making the primary (albeit initial) judgment as to prejudice and that the opinion of the qualified person should be afforded a measure of respect.

144. The opinion itself provides no evidential or factual reasoned basis for concluding that the relevant inhibition or prejudice would be likely to occur. The submission to the qualified person deals with the two sections now relied on in the following way:

> "Section 36(2)(b)(i) of the Act: we consider that the disclosure of the briefing packs would be likely to inhibit the free and frank provision of advice. It is important that a senior Minister is given the benefit of official advice ahead of meetings with prominent business personalities such as Mr Adani. The Minister should be clearly and honestly advised as to i) what the UK hopes to achieve, ii) what we consider the counterpart hopes to achieve and iii) any other relevant information that would facilitate the conduct of the meeting. If such information were to be prematurely disclosed into the public domain, it would discourage officials from being so forthright in their advice.
> …
> Section 36(2)(c) of the Act: we consider that the disclosure of the letter and the briefing packs would be likely otherwise to prejudice the effective conduct of public affairs. The disclosure of such information would impair preparations for diplomatic engagements by senior Ministers (and the reporting of such engagements), particularly in the promotion of UK commercial interests."

145. The submission also set out arguments that section 36 may not be engaged as follows:

> "18. It is open to you to consider the counter-arguments as to why section 36 of the Act may not be engaged. The main consideration is that disclosure of the information would not give rise to any prejudicial effect and, as a result, officials would not be constrained from the free and frank provision of advice for Ministers. You may well consider that a senior Minister and a prominent business person would not be deterred from exchanging views freely and frankly. You may also take the view that disclosure would not have an effect on the preparation of (and reporting of) diplomatic engagements by senior Ministers."

146. The justification provided in relation to section 36(2)(b)(i) was, at that time, applied to the entirety of the briefing packs. It is not based on the particular content of either of the briefing packs. The submission explains why clear and honest advice is important and then simply asserts that premature disclosure would discourage officials from being so forthright in their advice. We find that it contains no evidence or any factual or reasoned basis for concluding that such inhibition would or would be likely to be caused by disclosure of the material in question.

147. The submission does state that it is open to the Minister to consider the counter-arguments, but in relation to section 36(2)(b)(i) this is merely said to be that 'disclosure would not give rise to any prejudicial effect and, as a result, officials would not be constrained from the free and frank provision of advice for Ministers.' That is not a counter-argument, it is simply a statement that the relevant prejudice would not occur.

148. In relation to section 36(2)(c) the reasoning in the submission is that disclosure of the DIT letter and the briefing packs would 'impair preparations for diplomatic engagements by senior Ministers (and the reporting of such engagements), particularly in the promotion of UK commercial interests.' As the DIT letter has now been disclosed, the relevant reasoning is that disclosure would 'impair preparations for diplomatic engagements by senior Ministers'. The counter argument is set out as 'you may also take the view that disclosure would not have an effect on the preparation of (…) diplomatic engagements by senior Ministers.' Neither of these statements provide any explanation as to why disclosure would impair preparations for diplomatic engagements. They simply assert that this either would or would not be the case.

149. In relation to section 36(2)(b)(i) and section 36(2)(c) the submission does not address the factors highlighted at paragraphs 27 and 28 of **Lewis**. The opinion is provided in relation to the entire briefing packs with no reference to any specific content.

150. In Mr. Gelling's first witness statement he explained that advice given to Senior Ministers ahead of meetings with prominent business personalities would typically contain materials that the Government would not want the counterpart to know about and asserted that the briefing packs contain sensitive advice of that nature. He stated that premature disclosure of this information would discourage officials from being forthright in their advice.

151. In relation to section 36(2)(c) Mr. Gelling stated that the disclosure of the requested information would detrimentally affect the Government's preparations for diplomatic engagements by senior Ministers. The Cabinet Office asserted that it is important that such work is carried out in a confidential space, especially in respect of live issues, which, he asserted, these are (in a statement dated September 2024). He stated that this was also important when the promotion of the UK's commercial interests was at stake.

152. In Mr. Gelling's second witness statement he added that the disclosure of the information still withheld engages both exemptions because it discloses the way in which the government operates in its facilitation of international relations.

153. Mr Gelling also addresses the specific content of the redactions in his second witness statement. There is some additional reasoning in closed in relation to this. In open, he states:

    a. In relation to the first redaction that withholding the information protects a safe space and that the Prime Minister's office may feel less able to brief the Prime Minister on such matters in the future to prevent the issues identified in closed.
    b. The evidence in relation to the second redaction is mainly closed but the open statement states that the Prime Minister's Office would feel unable to brief the Prime Minister on such matters.
    c. In relation to the third redaction the evidence relates only to the section that we have determined can be withheld under section 27.

*Conclusions on whether the opinion is reasonable*

154. In relation to the first redaction, in our view there is no more than a very remote risk of any chilling effect or impact on the effective conduct of public affairs by disclosure of this passage in response to a FOIA request. This does not reach the threshold in FOIA of a real and significant risk or that disclosure would be likely to cause the relevant inhibition or prejudice.

155. Although, unlike the submission to the qualified person and the qualified person's opinion, Mr. Gelling addresses the specific content of the redaction, he does not address the matters highlighted in paragraphs 27 and 28 of **Lewis**.

Those writing the briefings are already aware of the risk of disclosure. They will be aware of the very particular circumstances surrounding Mr. Adani and the Adani group including the matters set out in the Science Museum's due diligence report, Mr. Adani's position and status and the size of the donation to the Science Museum and therefore unlikely to assume that this sets a precedent for disclosure of similar information in the future.

156. Officials are aware of the importance of providing clear and honest advice to the Prime Minister. It seems very unlikely in these circumstances that disclosure of this particular passage will have any impact on the way in which those officials conduct themselves in the future in the way described by Mr. Gelling in his closed statement.

157. We do accord the opinion of the qualified person a measure of respect, but we note that the opinion was not given in relation to this particular passage, nor was it based on anything other than high level generic arguments of the chilling effect of releasing the withheld information as a whole, most of which has now been released.

158. It is not for us to substitute our view for the qualified person, but in the light of the matters set out above we do not accept that it is was reasonable for the qualified person to have formed the view that disclosure of this passage would be likely to cause any chilling effect or any prejudice to the effective conduct of public affairs.

159. In relation to the relevant part of the second redaction we do not accept that there would be likely to be prejudice to the UK's interests abroad or the promotion or protection of the UK's interests abroad as a result of disclosure and therefore the exemption is not engaged.

160. Mr Gelling and Mr Waldegrave accepted that those sections are similar to what has now been released and were not able to explain adequately why the Cabinet Office took the view that these particular passages were sensitive or frank and thus might cause the relevant inhibition or prejudice, whereas the other similar passages would not.

161. We accept that the disclosure of similar material is without prejudice to the Cabinet Office's submission that it was correct to withhold the material, but in our view there is nothing specific to the material in the second redaction that we have determined is not covered by section 27 disclosure which would have been likely to inhibit the giving of advice or otherwise prejudice the effective conduct of public affairs. We conclude that the qualified person's opinion is not reasonable in relation to this part of the second redaction. The Cabinet Office is not entitled to rely on section 36 to withhold this material.

162. In relation to the relevant part of the third redaction, there is nothing in the evidence before us including the closed material itself, that highlights

anything specific to the material that we have determined is not covered by section 27 disclosure which would have been likely to inhibit the giving of advice or otherwise prejudice the effective conduct of public affairs. On that basis and taking account of all the matters set out above, we are not persuaded that the opinion is reasonable in relation to this part of the third redaction. The Cabinet Office is not entitled to rely on section 36 to withhold this material.

163. In summary we do not accept that section 36 is engaged in relation to any information which we have determined cannot be withheld under section 27.

Public interest balance

164. It is not our role to consider or rule on the rights and wrongs of 'green-washing' or the rights and wrongs of the operations of Gautam Adani or the Government's dealings with Mr Adani. The law requires us to us to weigh the public interest in disclosure and in refusing disclosure. We seek to do so dispassionately.

165. As we had decided that section 27(1)(c) was engaged, it was not necessary to go on to make findings in relation to section 27(1)(d). Whilst there is a difference in wording between the exemptions, there is a substantial overlap between the harm claimed under each sub-section. Thus, if we had decided that section 27(1)(d) was also engaged it would have been on the same factual basis and on the basis of substantially the same prejudice. For those reasons there would have been, in our view, no significant additional weight in the public interest balance by aggregating the exemptions, assuming that remains the correct approach following the decision of the Supreme Court in **Montague**.

*Public interest in disclosure*

166. The due diligence report on the Adani Group prepared for the Science Museum Group in December 2020 (SB1/159) includes 6 pages of text under the heading 'Have any public concerns been raised in relation to the company that could have an adverse effect on SMG?'. This includes 10 bullet points under the heading 'criminal investigations' 4 bullet points under the heading 'fines and litigation', 4 under the heading 'environmental issues', 2 under the heading 'debt and financial issues', 5 under the heading 'relationship to Prime Minister Modi of India', 1 each under 'worker conditions' and 'human rights' and page and a half on the Carmichael coal mine in Australia.

167. We accept that the factual allegations set out in the indictment which have passed the 'probable cause' threshold alongside the similar allegations made in the Securities Commission Complaint cast light on the facts in existence at

the date of the request and increase the public interest in transparency of relations between the Government and Mr. Adani or the Adani group.

168. Whether or not we take account of the matters alleged in the indictment and the Securities Commission complaint, we find that there is a very high public interest in transparency of relations between the Government and Mr. Adani or the Adani group and a very high public interest in transparency in relation to meetings between Mr. Adani and the then Prime Minister, given the seniority of the Prime Minister and the issues highlighted above relating to the Adani Group.

169. We have dealt with the public interest in disclosure in relation to each redaction in the closed annex.

170. In summary, in relation to the first redaction there is, in our view, added public interest in disclosure related to the content of the passage for the reasons set out in closed. In our view there is a particularly strong public interest in disclosure of this passage.

171. In relation to the second redaction there is, in the tribunal's view, no specific content-based increase in public interest in disclosure which adds anything of significance to the general public interest in transparency outlined above.

172. In relation to the third, fourth and fifth redaction there is some specific public interest in the content of those redactions which adds a little to the generally high public interest in transparency.

*Public interest in maintaining the exemption*

173. There is a strong and weighty public interest in withholding the first and second redactions because there is a very clear public interest in avoiding any risk of damage to the UK' s interests abroad.

174. In our view there is an even weightier public interest in relation to withholding the relevant part of the third redaction and the fourth and fifth redactions, because there is a very clear risk of prejudice to the UK's interests abroad.

*Conclusions on the public interest balance*

175. In relation to the first redaction we have concluded that the public interest favours disclosure for the reasons set out in closed, in particular because of the content of that redaction.

176. If we are wrong to conclude that section 36 is not engaged in relation to the first passage, and if the Court of Appeal is right that the public interest in

maintaining different exemptions may be aggregated, we would still have concluded that the public interest balance favoured disclosure of the first passage. The added public interest in maintaining the exemption, giving weight to the opinion of the qualified person, would still, in our view, have been outweighed by the public interest in disclosure.

177. In relation to the relevant part of the second redaction, we have concluded that the public interest favours maintaining the exemption. Although there is a generally very high public interest in transparency in relation to these meetings there is nothing in the content of the redaction which illuminates the particular concerns raised by the appellant or which otherwise adds materially to the public interest in disclosure. Given the strong and weighty public interest in withholding the information we have decided that the public interest favours maintaining the exemption.

178. In relation to the relevant part of the third redaction, and the entirety of the fourth and fifth redactions, although we accept that they serve the general and very high public interest in transparency, and there is some additional public interest in disclosure because they provide some detail of what was discussed at the meetings, we have decided that this is outweighed by the very strong public interest in withholding the information given the very clear risk of prejudice to the UK's interests abroad.

Signed Sophie Buckley

Date: 20 March 2025
Amended: 27 March 2025

Judge of the First-tier Tribunal